Single Bench

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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.No. 98 / 2005

Petitioner : Ritu Parn Namdeo, S/o Dr. Bharat Namdeo, Aged about 26 years, R/o 318 Vaishnav Colony, Civil Lines, Baloda Bazar, Dist. Raipur (C.G.)

Versus

Respondents :
1. State of Chhattisgarh through the Secretrary, Revenue Department, D.K.S. Bhawan, Raipur (C.G.)
2. Collector, Dist. Raipur (C.G.)
3. Sub-Divisional Magistrate, Baloda Bazar, Dist. Raipur (C.G.)
4. Tahsildar, Baloda Bazar, Dist. Raipur (C.G.)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.98 of 2005

Ritu Parn Namdeo

- Versus -

State of Chhattisgarh and others

POST FOR ORDER ON 15TH MARCH, 2005

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

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Present: -

Miss Pritha Ghoshal, Advocate: For the petitioner.

Mr. P.S. Koshy, Deputy Advocate General: For the State/respondents.

ORDER

(Passed on 15th March, 2005)

L.C. BHADOO, J: -

1. By way of this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality, correctness and propriety of the order dated 27.11.2004 passed by the Tehsildar, Baloda Bazaar, District: Raipur, whereby the Tehsildar rejected the application of the petitioner, moved for issuance of OBC certificate, on the ground that the petitioner's father's income is more than Rs.3 lakhs, therefore, the petitioner comes in the category of creamy layer.

2. Brief facts leading to filing of this writ petition are that after passing the graduation examination the petitioner is prosecuting his studies in law course at Delhi University and he is permanent resident of Baloda Bazaar, District: Raipur. Petitioner's father Dr. Bharat Namdeo is working as Doctor (Class-I Officer) in the Health Department in the State of Uttar Pradesh. Father of the petitioner is from Namdeo caste, which has been declared as Other Backward Class for the State of Chhattisgarh. Further case of the petitioner is that the petitioner appeared in the All India Services Preliminary Examination conducted by the Union Public Service Commission in the year 2004 which he passed and thereafter, he has appeared in the main examination and the result is likely to be declared in the month of February, 2005 or March, 2005. The petitioner belongs to Namdeo (Darji) caste, which falls in the category of backward class. Accordingly, the petitioner's uncle moved for issuance of OBC certificate. However, the Tehsildar orally refused to issue the certificate on the ground that the petitioner's family

comes in the category of creamy layer. The uncle of the petitioner approached respondent No.4, but he replied that the authorities are waiting the relevant circular of the State Government and the Union Government, and ultimately, the petitioner's uncle wrote a letter to the Collector requesting him to direct the sub-ordinate officers for issuance of the certificate. When under the direction of the Collector the petitioner's uncle appeared before the Tehsildar, then he said that the petitioner comes under the category of creamy layer on the ground that petitioner's father Dr. Bharat Namdeo's salary is more than Rs.3 lakhs per annum, whereas, the said impression of the Tehsildar is incorrect in view of the circular dated 9-3-2004 (Annexure P-5) issued by the Union Government. The UPSC vide its letter dated 3-11-2004 directed the petitioner to submit the caste certificate by 23-11-2004 failing which candidature of the petitioner for the examination will be cancelled. Under the circumstances, the petitioner filed Writ Petition No.4374/2004 and the Court directed the Tehsildar to decide the application of the petitioner and ultimately vide the impugned order, the Tehsildar has rejected the application.

3. Further case of the petitioner is that as per the guidelines issued by the erstwhile State of Madhya Pradesh in the year 1999, the petitioner does not come under the definition of; creamy layer, although the father of the petitioner is a doctor (Class-I Officer), but he was initially recruited as Class-II Officer and was promoted as Class-I Officer after attaining the age of 50 years. Therefore, as per the guidelines, the petitioner does not come under the category of creamy layer. It is clear from the above guidelines that while considering the criteria of income of any person in order to decide whether a particular person comes under creamy layer or not, salary or income from the agriculture cannot be added for the purpose of ascertaining the income, as such, the impugned order is arbitrary and the same is liable to be quashed.

4. Return has been filed on behalf of the State/respondents in which it has been mentioned that the salary income of the petitioner's father is more than Rs.3 lakhs, therefore, in view of clause 6 of the Guidelines, 1999 (Annexure P-10) the petitioner comes under the category of creamy layer and he is not eligible for OBC certificate. An objection has also been raised that the petitioner ought to have filed appeal before the Sub Divisional Officer, as alternative remedy is available to the petitioner.

5. I have heard learned counsel for the parties. Since return has already been, therefore, it was decided to dispose of this petition at the admission stage.

6. Learned counsel for the petitioner argued that it is clear from clause 6 of the guidelines (Annexure P-10) that while assessing the income of a person for the purpose of a decision whether a particular person's income is beyond the ceiling of the said circular or not, the income from salary or agriculture cannot be taken into consideration. Therefore, the decision of the Tehsildar is incorrect.

7. On the other hand, learned Deputy Advocate General vehemently argued that as the salary of the petitioner's father is more than Rs.3 lakhs i.e. beyond Rs.2 lakhs, therefore, he comes under the category of creamy layer. As per explanation 1 of clause 6 only the agricultural income cannot be included in the salary in order to decide the income for the purpose of issuance of the certificate. Since, income of the petitioner's father is more than Rs.3 lakhs by way of salary, therefore, his income is beyond the prescribed limit, as such, the petitioner comes under the category of creamy layer. Same stand has been taken by the Tehsildar while passing the impugned order and rejecting the petitioner's application.

8. As far as the question of alternative remedy is concerned, it is true that the petitioner could have filed appeal before the Sub Divisional Officer against the impugned order, but it is settled law that alternative remedy is a rule of discretion and not rule of compulsion. For this view, I am fortified with the judgment of Apex Court reported in **(2003) 2 SCC 107 (Harbanslal Sahnia and another vs. Indian Oil Corpn. Ltd. and others)**. In view of the above decision, as the order of the Tehsildar is patently contrary to the circular issued by the Central Government and the guidelines issued by the State of Madhya Pradesh, therefore, I am of the considered opinion that the writ petition is maintainable.

9. In order to appreciate the arguments advanced by learned counsel for the parties, if we look into the guidelines dated 30th July, 1999 (Annexure P-10), issued by the erstwhile State of Madhya Pradesh which is based on the notification No.36012/22/93/(ईस्टा)एस.सी.टी. dated 8th September, 1993, issued by the Union Government for laying down the criteria regarding the persons who come under the category of creamy layer, in category No.1

persons holding constitutional posts i.e. the President, Vice-President, Judges of Supreme Court & High Courts, Chairman & Members of the UPSC & State Public Service Commissions, Chief Election Commissioner, Comptroller & Auditor General of India and the persons holding equal constitutional posts; and in category No.2 persons appointed on Class-I posts or those who have been promoted to Class-I post before attaining the age of 40 years have been declared to be persons falling under the category of creamy layer. Thus the sons and daughters of IAS/IPS Officers, Class-I Officers or those Officers of the Central & State Government who have been promoted before attaining the age of 40 years cannot get the benefit of reservation and such persons have been declared to be covered under creamy layer. In the third category, persons holding the post of Colonel and above or equivalent posts in army, navy, air force and para military force have been declared to be persons of creamy layer. Under category 4 & 6, persons who are engaged in business, trade and industry or profession whose gross income is more than Rs.1 lakh earlier, now Rs.2 lakhs, in the last three consecutive years and who have wealth in excess of exemption limit which is Rs.15 lakhs with one house property of any value and of commercial and agricultural assessed tax have been declared to be covered under the creamy layer. Further an explanatory note has been added to clause 6 which envisages that the income from salary or agriculture shall note be included for the purpose of deciding the point of income.

10. Therefore, as far as the Government servants are concerned, in order to decide whether they are covered under the creamy layer or not the criteria which has been fixed under the circular for Government servants has been mentioned in clauses 1, 2, 3 and 5-a, that means the persons of above categories will be considered under the creamy layer, as such, for the service class people, creamy layer criteria has been fixed looking to their rank and post held by them, not on the basis of their income by salary i.e. irrespective of salary the persons who are covered under the category by their post have been declared under the creamy layer. Whereas, under clause 6 in order to bring under the mischief of creamy layer if any person's income is more than Rs.1 lakh (now Rs.2 lakhs) from business, trade, industry, profession, income from interest, dividend and property exceeds Rs.2 lakhs, then they are covered under the category of creamy layer. Since the criteria for service class persons has been laid down by their post

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and rank, and salary has not been taken into consideration, therefore, explanation No.1 added to clause 6 says that in order to decide whether a person comes under the category of creamy layer on account of his income and property, then the salary of that person or income from agricultural cannot be included with other income based on which that person is being considered whether he comes under the category of creamy layer or not. For example, if any person is a Government servant or servant in the Corporation, Public Sector Undertaking, Bank, Insurance, University, he has also agricultural income and apart from that income from other sources is also there, then while considering the income from other sources whether on account of that, that person comes under the category of creamy layer or not, his income from salary or agriculture will not be includable with the income from other sources.

11. Therefore, I am of the opinion that the order impugned is wholly arbitrary, illegal, and unjust not being in consonance with the notification issued by the Central Government and guidelines issued by the State of Madhya Pradesh. As the petitioner's father does not come under the creamy layer in any of the clauses viz., clause 1, 2, 3 & 5-a, and he has no income from other sources so as to put him in category 6, his only income is salary and according to his status neither he was appointed as Class-I Officer at the initial stage nor he was promoted to Class-I post before attaining the age of 40 years, as such, the decision is liable quashed, and the same is accordingly, quashed.

12. In the result, the writ petition is allowed and the Tehsildar is directed to consider the application of the petitioner forthwith based on the above interpretation of the guidelines issued by the State of Madhya Pradesh. In the circumstances of the case, I make no order as to costs.

Sd/-
L.C. Bhadoo
Judge

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